2: Hudson E-4, 5 (1936) 1936 RQ2 Kazak RQ2

428 to keep the shares of all sons as nearly equal as possible. If the father had not already negotiated for wives for his sons, the first necessity was to assure to each a sufficient competency in animals to pay the bride price. This requirement frequently absorbed the major part of the estate.

The division among the older sons having taken place, the remainder after the death of the father passed to the youngest son. He inherited also the kibitka of his father and the winter dwelling, although if the father had not had the means to provide the other sons with their own houses for winter they might continue to live with the youngest son in the house he had inherited.[59]

[583] A daughter did not normally inherit, but among the wealthier families received on her marriage a dowry which was, theoretically at least, held in trust for her by her husband.[60]

A daughter might also be considered in herself a valuable part of the inheritance in anticipation of the bride price which might later be received on her marriage. This potential income, especially in poor families where there was little actual property to divide, might be of great importance, and the sons, if there were nothing else, would apportion among themselves the bride price received for their sisters.[61]

[429] [587] If a father died while his children were still minors his estate would be held in trust for them until they came of age by his brother, who, under the levirate, would normally marry the widow. That this guardianship was not without its perquisites is indicated by Grodekov's remark[62] that, "Upon coming of age the heir may overlook the embezzlement of his portion."

According to Levshin[63] careful husbands kept separate from their own possessions the dowries of their wives, since the wife's property was inherited by her own children alone and not by other children of her husband. I am not sure that this was usually the case. My informants were inclined to think that most husbands were not over-scrupulous about annexing their wives' dowries to their own property.

If a man died childless, his widow or widows, according to my information, would inherit. If there were more than one, the largest share went to the senior wife, in priority of marriage, and smaller shares to the junior wives. The actual division was determined [587] by the aqsaqal.[A] A widow marrying again retained the property which she had inherited. It did not pass to her new husband, although normally she would be expected to marry his younger brother, in which case it would remain in the family.

[597] Adoption might take place in order to acquire an heir. According to Tlenshiev, if a man died leaving only an elderly widow and no children she might adopt a son from another family in the uru, probably a son of the deceased husband's brother, who would be formally considered as her son and would inherit the property of her husband after her death.

[59] See also Radlov, *Aus Sibirien*, 1: 416.
[60] See also Levshin, *Description des hordes*, 364.
[61] Dingelstedt, *Le Droit coutumier*, 153–54.
[62] *Kirgizy i Karakirgizy*, 40.
[63] *Description des hordes*, 363.

1 [leader of uru -- Analyst]

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2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

parents to prevent the breakup of their daughter's marriage so that they might not run the risk of being obliged to return the kalym. An unscrupulous father might simply refuse to restore it under any circumstance, thereby precipitating a quarrel which could end in a blood feud.

The wife might, according to one informant, leave her husband because of cruel treatment and return to her parents. This statement is somewhat at variance with the notion of the Kazak woman as being in effect the slave of her husband. The force which restrained her from leaving a cruel husband was probably the fact that she would not be welcomed back by her family who would then be under obligation to return the full kalym because of her desertion. Karutz[81] suggests that harsh treatment on the part of the husband might justify a woman in leaving him.

In some cases divorce was permitted a woman from a particular husband but she was obliged to take another from his close relatives, preferably his younger brother. Impotency on the part of the husband was cause for separation but the wife had to marry again within the first husband's family. Similarly, a wife whose husband was absent for seven years without making provision for her, reverted to his brother.[82]

Levshin says[83] that only the senior wife, if she had sufficiently grave reasons, might return to her own family. The junior wives had no such privilege.

According to Grodekov's information a divorced woman, who, as a wife was considered as belonging in a sense not to an individual but to the group, must always take another husband from among the first husband's relatives.[84] My informants said that this was by no means the case. A divorced woman might return to her own parents or marry again some man from a third group. There were numerous instances of this but one must consider the possibility that it may represent a comparatively recent development. Also it is necessary continually to bear in mind the difference between theory and practice in social relationships.

A similar problem is involved in the question of the disposition of the children of a divorced couple. At first my informants said that all children would invariably remain with the father.[85] Later it appeared that although sons would always stay with the male parent it was not unusual for a daughter to go with her mother. Dingelstedt moreover[86] indicates that the eldest son had a right to choose between his parents.

The question of the uru affiliation of children who went with the mother at the dissolution of a marriage is of importance. Tlenshiev said that when a divorced wife returned with a daughter to her own family the daughter lost connection with the uru of her father. The

[81] *Unter Kirgisen und Turkmenen*, 111–12.
[82] Dingelstedt, *Le Droit coutumier*, 155.
[83] *Description des hordes*, 364.
[84] Dingelstedt, *Le Droit coutumier*, 147.
[85] See also Karutz, *Unter Kirgisen und Turkmenen*. 112
[86] *Le Droit coutumier*, 155.

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mother would probably marry again into a third uru and the daughter would go with her 586
and be considered a member of the family of the mother's new husband. She might, according to Tlenshiev, even marry back into the uru of her real father. Another informant objected to this statement and said that she could only do so if the seven generations rule permitted; such, of course might perhaps be the case even if she had remained with her father in the first place.

The evidence on the whole indicates that a wife in theory was considered to belong permanently to the uru of her first husband, and the children to the uru of their father, although in practice, especially as regards residence, there might be numerous exceptions to the rule.

LEVIRATE AND SORORATE

Both the levirate and sororate were practised in variable and attenuated forms by the 587
Kazak. My informants said that as a general rule when a man died his wife would marry his younger brother; if he had no younger brother she would marry an elder brother. If the deceased husband had no brothers she would marry some relative, probably a son of the husband's father's brother. She was in any case expected to remain in the husband's uru, but considerable latitude of choice was permitted her. Tlenshiev said that if she happened to prefer an elder brother to the younger brother she might marry the former if everyone were willing.

It is important to note that the taking over by a brother of his widowed sister-in-law had the character, in many cases at least, not of a marriage but of a guardianship.[87] It was essentially a device to ensure the support of the dead man's children. Frequently a childless widow or one with grown children would not remarry at all. The personal element of course was very important. The disposition of a young and attractive widow sometimes became a bone of contention between surviving brothers. On the other hand a man might receive his brother's widow as an obligation to be dutifully accepted, perhaps having occasional sexual intercourse with her as evidence of cordiality but generally relegating her to a position of pensioner. One case was mentioned of a man who objected strongly to taking in his brother's widow, but, being ordered to do so by the bij, submitted.

Information from other sources on the observance of the levirate is contradictory but generally suggests the flexibility of the institution. Zaleskie says[88] that not only a widow but a financée for whom part of the kalym had been paid was absolutely obliged to marry a near relative of the dead man. But he adds that this did not apply to women who had adult children. Grodekov[89] states that a widow should take a new husband from the family of the first and that it was the eldest brother who had first claim to marry her, although he might cede his rights to a younger brother and even to his own son. It was,

[87] See also Beveridge, *Babur-nama in English*, 23 and note.
[88] *La Vie des steppes*, 52.
[89] *Kirgizy i Karakirgizy*, 12; also Dingelstedt, *Le Droit coutumier*, 154–55.

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

587 however, optional for the widow to remarry. If she wished to remain single she was entitled to a share of her husband's property or might even, with the consent of her first husband's family, marry a man who was not related to them, provided kalym were paid to the first husband's family by the new husband. She might go so far as to remarry without their consent and without payment of a second kalym but the marriage would not be considered as altogether respectable. Elsewhere Grodekov says[90] that when a widow married a husband in a "different tribe" the children stayed with a guardian in the first tribe. It is not unlikely that in such cases there were exceptions similar to those which have been mentioned in reference to the disposition of children of divorced parents.

[586]

It was customary, though by no means obligatory, for a man to marry the younger sister of a deceased wife, provided of course that she were not already married to someone else. In marrying a wife's sister a greatly reduced kalym or perhaps none at all was paid. The wife's father however might refuse to give over a second daughter but, according to Grodekov[91] would be obliged to pay a small compensation for the refusal " . . . unless he had good reasons." If a fiancée died before marriage her family was expected to substitute her younger sister. It was, however, very definitely not permissable to be married to two sisters simultaneously. My informants were noticeably shocked at the suggestion. One of Grodekov's informants told him that two brothers might not marry two sisters and the wives of brothers must be at least three generations removed from one another. In other districts he found no objection to brothers marrying sisters.[92] My own informants thought it was quite usual.

[90] *Kirgizy i Karakirgizy*, 38.
[91] *Idem*, 30
[92] *Idem*, 28–29.

576 Did your father die?" They also avoid calling someone from a distance.

/12/ CHAPTER II.

The clan principle. - Custom

618 The enormous importance of the clan principle (1) stems from

1. On the clan origin as the most ancient stage of social development of all peoples, cf. Pervobytnoe Pravo /Primitive Law/ by Makim Kovalevskii, Moscow, 1886, Pt. 1. Clan.

[695] the law of force: the individual finds defence only in his clan. The clan answers for his transgressions. The propitiatory oath is imposed not on the responsible individual but on another person from his clan. (2)

2. Hence a man without a clan or a musafir always risks losing a case, being unable to procure his kinsmen to take the oath.

[672] The exaction of payment is also received not by the person but by
[628] the clan. When wergeld is not paid, not necessarily the murderer,
[587] but any person from his clan is killed. A bride belongs not to a
[429] person but to a clan. A widow goes to the nearest relative of the deceased, and a divorced woman must choose a new husband from the clan of her former husband. The nearest kinsman is always the guardian. Guests are received according to their degree of kinship.

The bearers of the clan principle are the rich men and the senior elders (aksakals). (3) Beyond the names of their direct ancestors and

3. Among the Sarts the aksakal is an administrative figure - a village elder. Among the Kazakhs he is the person in a given place who has the highest authority by blood.

their clan and lineage, the poor know nothing of the distant branches of their kin.

The volost administrators elected by the people retain their posts only when they belong to the strongest clan in the volost.

The decline of the clan principle is marked by frequent litiga-

582 page. Picture. 2 Caption: The Kirgiz manap mullah Asan Dzhangel' din, of the Auliye-Ata uyezd. / /29/ of two brothers must be no more closely related than the third degree of kinship.

Sisters may marry two first cousins, but even this is not done eagerly, and they say it would be better to establish a bond in two places rather than in one (eki tamyrdi br tamyr kylmaimyz).

It is impossible to marry your step-sister (not your own-ugei), from the same father but another mother, and vice versa. It is impossible to marry a step-daughter, whether a maiden or a widow. (1)

1. "Anyone who did that would become an infidel /Kafir/" cried bii Khamahammed.

2 [Picture not reproduced--A]

582 587 A widow may marry a step-son, born by another wife of her late husband. A widow does not marry her father-in-law, but she does marry his brother. A daughter cannot marry the brother of her father's wife, but she can marry his son.

It is impossible to marry one's step-mother (ugei sheshe). If a widow with her son goes over to the older or younger brother of her husband, who was already married earlier, and if he also dies, then a son can marry his widow, i.e., his own step-mother, as Torgai expresses it, by the Shariat, but not by customary law. If the wife of the uncle does not become one's step-mother, then one can marry her also according to customary law (Torgai).

According to Khamahammed, Chimkent uyezd, it is impossible to marry the son's widow /or/ the wife's mother. The son of one wife can marry the step-daughter of his father by another wife.

In contradiction to Makovetskii, Pt. 1, p. 2, this bii finds that two brothers can marry two sisters, or one can marry the mother, and the other the daughter. Sultan Abulfaiz, of the Chimkent uyezd, says the same thing, stating that he has encountered examples of it.

To marry the sister of one's step-mother is considered reprehensible, although this does happen for love. The Kirgiz Kurpetai Dauletkulov says that such a marriage is illicit.

/30/ The sister-in-law, the sister of the brother's wife, is considered the blood sister until the death of the brother. Therefore it is impossible to marry her until this time.

587 It is impossible to marry the wife's sister (baldyz), as long as the wife is living.

After the death of a wife, the husband demands her sister for himself in marriage, if she is still unspoken for, or her kinswoman, with the payment of a bride price minus 6 head of livestock from

587

the distribution of the yakhsy. (1)

1. On the yakhsy, cf. below.

When the wife's father demands that his son-in-law marry the baldyz /the wife's sister/, the son-in-law can refuse, but for such a refusal it is customary to compensate the father-in-law with a horse or a khalat /coat/, excepting only the case when the refusal is based on delinquency or some sort of inadequacy of the bride.

582 [565]

It is impossible to marry the wet nurse (eneke) or her sister (emekdas), but it is possible to marry her close relatives.

The white bone marries among its own group, and they take brides from the black bone, but they do not marry their women to the black bone.

According to customary law, a teacher should not marry his student, although the Shariat does not prohibit it (Perovsk uyezd). According to Torgai, the Shariat permits the marriage of a teacher (ustad) with his student but not between a woman teacher and her student. The customary law permits both. Among the Kirgiz it is also permissable.

* * * *

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The kinship terms in Kazakh

Father - ake (ata in Sart).
Mother - sheshe. She is also called apa (ana, ena in Sart).
Step-father - ugei ake.
Step-mother - ugei sheshe.
Son - ul.
Daughter - kyz.
/31/ Step-son - ugei ul, ugei bala.
Step-daughter - ugei kyz, ugei bala.
Elder brother - aga (ake in Sart).
Younger brother - ini (uke in Sart).
Elder sister - apa.
Younger sister of a man - kyryndas (singli in Sart).
Younger sister of a woman - singli.
Grandfather, father's father - baba.
Grandmother, father's mother - ulu ene, kar'ya sheshe, adzhe.
Grandfather, mother's father - nagashi, nagashi ata.
Grandmother, mother's mother - nagashi sheshe.

Kazalinsk uyezd the boys marry from 9 to 12 years of age. The early 582
marriage of the daughters is dependent on the poverty of the parents, for whom it is difficult to support them. In the Chimkent uyezd the bride is usually sent away at the age of 20 to 25.

After the full payment of the kalym the marriage cannot fail 586 836
to be consummated. But unchastity or other faults (aib) of the bride which have taken place without it being the fault of the groom, and also the incapacity of the groom for marital cohabitation can be reasons for not consummating the marriage even after the payment of the bride price.

A good groom keeps silent about the shortcoming of his bride which he knows about, especially since now a bride who is faultless is rarely found (Perovsk uyezd). If he makes a complaint but does not renounce the marriage he can be returned half the kalym. If he completely renounces the bride, they offer him the choice of another daughter or the whole (tegiz) kalym which has been paid. If the groom refuses the marriage without guilt on the part of the bride, he cannot demand the return of the paid kalym. Sometimes it happens that they do return part of the kalym to him. (2) From the Chimkent uyezd it

2. If the bride declares her unwillingness before the Russian authorities, to marry the groom chosen by her father, then if she is still in her father's house, this is equivalent to the annulment of the ritual of marriage, and she is permitted to marry according to her own choice, with the return of the part of the kalym received from the former groom.

is reported that in /56/ the case of such a refusal, if the groom had been living with his bride, he pays a fine of eight horses and one camel.

If the bride complains to her mother of the groom's having relations with her before the wedding, then his clothes are torn and the belly of his horse is ripped open.

If a girl who is not betrothed has a child, she is considered the 588
wife of the child's father, without having received a kalym. Her father or kinsman may sometimes demand a full kalym for her, depending on the beauty and youth of the bride and the wealth of her parents.

After the death of the groom, the bride is counted on for his 587
brother and /schitaetsia za ego bratom/ in general for his nearest kinsman, which proves that the bride was and is now considered the property of the clan

587 In the folk poem Dzhibekkyz, the hero Tulegen, of the Dzhagalbayly clan is killed. His brother, when he comes of age, goes to seek the hand of Dzhibekkiz, the bride of the deceased. He says, among other things: "If she does not wish to marry me, I will return with my tail between my legs" (kutimni kysyo). From the time of the death of her first husband Dzhibekkyz has been waiting for the arrival of his closest kinsman or other relative. She says: "I was betrothed (bas kaskanym) from the beginning to the Dzhagalbaily clan, which is so rich that if is unable to look after its herds. If it is true that Tulegen has been killed, then O God, why do they not take Dzhibek? Surely there is one young fellow in his clan who would ask for and receive his bride (yesir)!"

If the bride dies, her father or kinsman gives the groom her unbetrothed sister or close kinswoman for a small addition to the kalym (called baldyzkalyn) of one or two camels. When there is no other girl, the kalym is returned in full if the bride died in the house of her father, i. e., before the wedding. If after the death of a bride, her sisters are still too young, their father invites the son-in-law to visit him, gives him a horse or a camel and begs him to wait until the girl is more mature. If the groom /57/ refuses to wait for her to come of age, two parts of the kalym which has been paid is returned to him, and one part remains for the bride's father. A bride can marry the younger brother of the groom, with the agreement of the groom's side. In this case, even though the visit to the bride has taken place, yasyrin kelyu, nothing is added to the previous kalym. If the oruntoy /cf. below/ has taken place, then a baldyzkalyn is paid for the sister in addition to the kalym, a sum equal to half the given kalym. In extremity, if no bride is available, the kalym is returned minus 1 kulundi biya, or according to other data, half the kalym if the groom had been going to the bride, or the entire kalym if he had not been going.

After the death of a bride, the groom is obliged to visit the village of her parents, otherwise he loses the right to her sister. In this case, for his new betrothal he is required to pay a toguz in addition (the books of the biis).

If a father who had received a kalym from one groom married the bride to another, in former times the first groom tried to kill the father or his rival, demanding to be given the bride, calling her tangbaly tayimning kuzi (the eye of the marked colt), and not agreeing to the return of the kalym or else demanding to be given her sister and one slave to be sent with her, to wipe away the dishonor.

583

For kidnapping the bride before the full payment of the kalym, from 1 to 3 toguz are exacted in addition to the kalym.

The groom sends one or several animals every year on the account of the kalym, animals which have been raised at home or bought for money he has earned. The bride waits from 12 to 20 years for the full payment but no longer.

If after this the groom acknowledges that he is unable to pay it all, they either forgive the remaining amount and marry the daughter to him, or keep another daughter for him who is younger and can still wait, and marry the other one to another. In extreme cases they give the groom back what has been received from him.

595

According to the Shariat, it is impossible to have more than four wives at the same time. The customary law does not limit the number of wives, for a wife is only a female, urgashi isebinde. /Inserted page. Picture. Caption: Old Kirgiz woman of the Perovsk uyezd./ /85/ The man who has more than four wives lives conjugally only with the four married latest in time. The others become sufi, abstinent, and do not have marital relations (yatpeydi).

According to customary law, the husband of four wives should spend the night with each one in order. She whose turn it is to spend the night with him cooks the food. When there is a disagreement among the wives, the bii divides the dwelling quarters, all the utensils and even the animals (making earmarks) according to the number of wives. If one of them dies without children, the things entrusted to her are divided among the remaining wives (Perovsk uyezd).

The younger wives (tokal, or, more politely, kshi khatyn) show special respect to the oldest wife (baybishe). Otherwise they are all alike. The children of all the wives now have equal rights. [567] The children of slave women were without rights.

According to Umurbek, the baybishe can give orders to the younger wives and their children, if the latter are not greatly loved by the husband. If the children of the tokal are cleverer than the children of the baybishe, then they give them orders.

The agreement of the wives already married is not demanded for marrying another. They weep and wail (yilab syktab yuredi). Their displeasure is expressed in the words: did I not bear you a child, etc. According to another report, they do ask the agreement of the wives.

765

The period of mourning of the widow (idda) lasts 40 days, according to the opinion of some biis, and according to other reports, 4 months and 10 days (for the childless 3 months). A widow or divorcee

458?

[Not reproduced -- A.]

765 should not marry before this period of time has elapsed. E. A. Alek-
587 sandrov reports that the widow should not marry for a year. But, now, under the influence of the Shariat, the period of widowhood lasts 100 days.

The widower does not wear mourning, and his entrance into marriage is not restricted by a definite period of time.

587 The widow who wishes to marry (yesir) after the period of mourning (idda), must marry without fail the blood brother or /83/ closest kinsman of her husband, excluding his father, without a kalym. At the wedding they slaughter only one sheep. If she wishes to
589 remain a widow (tulkhatun), no one forces her into a second marriage. The reason for not marrying, for which they praise her - is not wishing to part with her children, who must remain in the house of the deceased. Then she continues to be considered the acquisition of the deceased and receives clothing and support in his house from the succession, even though she is childless. In the Kazalinsk uyezd, a widow who refuses to marry the brother of her late husband, remains the mistress of the property of the deceased husband only if she had children by him, and absolutely destines herself to be a widow. She is considered to be guardian of the sons until their majority. After that, even, after their majority she has full power to manage their property.

587 After the death of a middle brother, his wife goes to the older' and not to the younger brother, although usually the widows, preferring the younger, declare that the purely parental relations of the former brother-in-law (kaynaga) to them cannot be changed into marital relations. If in this case the older brother gives way to the younger one, he can insist on being given an atton /a horse and a coat/.

If the widow wishes to marry the son of the older brother, the younger brother will not agree to this, saying: I am senior to him in rank (yulym ulkun). Then the people can say to the older brother: If you do not marry her, because your wife does not agree to it, then your younger brother marries her. But let him give you an atton for seniority (yulyngdy kylsun). If the wife of the younger brother, learning of this, also raises a howl (uibui saldy), then he can fail to give this atton, and not marry the widow, but say to the son of the older brother: I give up my seniority to you, my child, (yulumdy balam sagan berdim). For his yielding he receives an atton from the latter.

An outsider, who wishes to receive the agreement of the rel-

587

atives of the deceased to marriage with the widow by stealth, begins to live maritally with her. Then the lawful husband does not wish to take her "because the hem of a stranger has touched her" (itegi tiibti), but /87/ he makes a complaint nevertheless and receives satisfaction in the form of a horse or a camel(1), and the people sanction

1. The new husband at first suggests little, for example, a horse. The lawful groom does not agree to this, threatening to kill. Then they propose more, a camel, etc., until the legal groom is satisfied (razy klady).

the arrangement which is made.

If the widow marries a stranger, with the agreement of the relatives of the deceased, her children, even those not yet born, remain in the house of the former husband (2) and the new husband

2. There are cases where all the children go with the mother.

pays the family of the deceased at least half a kalym, or else provides a girl.

If after the mourning period a kinsman of the groom does not appear to receive the yesir, the biis give the widow permission (achyk khat) to marry according to her choice. (3)

3. The law of 1867, in case of an unsatisfactory decision of a people's court on marital matters, let them turn to the uyezd chief with a complaint. Usually the Russian administration has permitted the widows to marry according to their choice. This type of decision, going contrary to custom, has given birth to disputes between the choice of the heart and the lawful groom.

When the widow has already had a wedding (nika) with an outsider without the permission of the husband's relatives, then the marriage is considered valid and only the question of the amount of compensation to the husband's relatives remains open. The lawful bridegroom, even though he does not receive a full kalym, has never gone away empty-handed (kuru kalmaydy) thus far.

A bii does not believe an accuasation of marital infidelity without witnesses. 584

The lover, about whom there has been a complaint to the bii,

we will not give her up to you." The second time /89/ they really do not give her up. The husband already does not go for her, but sends a third person to settle the account, i.e., to receive 3-4 kara.

If the disharmony with the husband which took place is the fault of the wife (aib khatyndan bulsa), i.e., for infidelity, a bad tongue, etc., then her relatives do not accept her, even though she runs away to them twenty times, and they say: we will not demand vengeance money for you. Then she goes to another more distant relative (baska turkun). Her lover appears there and says: "Your kinswoman has separated from her husband. I will take her and pay all the expenses." The husband takes it to court. The wife does not wish to return to him on any account. Her lover pays 6-7 kara or 30 tillias for the benefit of the husband.

If a lawful wife starts a quarrel with her husband in order to leave him, without any cause from his side, customary law does not permit her to do so. If in spite of this there is no possibility of keeping her with him, the husband is required to give her a letter of divorce, and the wife or a man who wishes to marry her is obliged to return in full the kalym which was received for her.

For killing his wife, the husband pays her relatives (as for mutilation) less than the usual female wergeld according to kinship, as it is said.

For barrenness (bedau, kysyr) a wife is not sent back to her father, but they ask the mullah to read over her, or send her to spend the night at holy places and burn a candle there (mullaga okutady, auliya tunetedi charag yagib). In the poem Shura-Batyr is a description of the journey of Marykbai and his wife Gul'kanys, for this reason, to the tomb of a saint, who appears to them and promises a son and a daughter.

After repeating the words talak (divorce) or talak koydym (I have given a divorce) three times, a divorce is validated according to the Shariat. In addition, a woman who goes away to her father's house, or to the person who married her off is usually considered divorced. She does not take property with her, but /90/ the husband gives her something, for example, one-eighth of his property, if she was not guilty in the divorce.

A divorced woman no longer walks covered with a veil, as she did formerly.

Former spouses can marry again, even up to three times. The fourth time a woman can marry her former husband only if she was married to an outsider after the third marriage. In the Kazalinsk uyezd,

587 a divorced woman can marry her husband for the second time only if she has been married to another, received a divorce from him and has lived unmarried for 100 days. Here the influence of the Shariat is felt.

586 A marriage is dissolved after the husband has been absent without report for 7 years, if in this period he could not be found, and means for support of the wife were not brought from him. The wife in this case is acquired by the older brother without a kalym.

A marriage is dissolved in the case of incapacity of one of the spouses (szharamsiz, bili dzhok, erlikke dzharamaydy), even after long years of living together. If the husband denies his impotence, the wife orders him to establish the truth under the observation of the elder (the bii books of the Perovsk uyezd). According to the declaration of Aver'yanov, the former chief of the Namangan uyezd, a Kirgiz woman who was complaining of the impotence of her husband, was led into a special place, lay down there, in the presence of the biis, and invited her husband to prove his capacity for marital relations. The husband proved to be impotent. (1)

1. According to a report of I. I. Ibragimov, one Siberian bii ordered the married couple to be intimate, and appointed several persons from among his intimates to observe them from outside the tent. In addition he appointed one person apiece from the side of the plaintiff and the defendant. The observation led to nothing for the observers, like the couple themselves, contradicted each other, so the bii ordered them to be led into a special tent and to make the same experiment, but in hot water. The husband proved to be impotent.

The wife, when she declares that her husband is impotent to his relatives, asks permission to marry another. The husband's relatives, seeing no basis /91/ for refusing, oblige her only to choose the new husband from the same clan and lineage, so as not to cast a shadow on their lineage. The new husband in such a case does not pay the first one a full kalym but a "kin" one the amount of which is greater, the more distant the degree of kinship. (1)

1. Communication of Torgai.

586 among the relatives. The groom's father is the first to give to the contribution. This property remains with the husband in the case of divorce.

According to Umurbek, the children of divorced parents remain with the father, but an amicable agreement can be reached and the young ones granted to the mother. According to Mikebai, often the relatives will not permit a minor son to go to the new husband of the widow. A grown son has freedom of choice. The first of the daughters always goes with the mother, and the others remain with the successors. Now, however, the daughters too have the right to give consent or not.

587 429

Among the Kirgiz, Kurpetai Daulekulov reports that the sons and daughters remain with the father's relatives after his death. If there are several daughters the biis may allot the youngest one to the mother. According to the report of the Kirgiz Daniyar, a widow who marries a close kinsman of her husband, takes property with her and a young son. But if she marries a strange man she receives neither property nor the son, and the kalym which comes for her goes to the brothers of the deceased and in part for the use of her children. A divorced woman also fails to receive property or her son.

If the step-father is killed, the step-son does not have the right to claim wergeld. Likewise if the step-son is killed, the step-father has no right to demand wergeld. The wergeld is demanded by the closest kinsmen, and the step-father or the step-son can only receive a reward for the expenses born by them for the burial. The step-father has a right to demand wergeld for his own use for a killed step-son only if there are no other kinsmen.

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/93/ The wife does the work her husband directs her to do. She is not allowed to argue (erkbermeymiz). In the absence of the husband the wife feeds herself from his livestock. Even if there are no means of life for a long time, she still cannot marry another because of this.

593 562 837

There is no obstacle preventing a husband who is absent for a long time from entrusting or reconveying his wife to another. Only the latter is not customary. (1)

1. According to Makovetskii, I.P. 24, this happens: "the biis refuse a husband who claims the wife who has been sold."

Only daughters given to ishans as a gift (nazyr), not wives.

Kazakh men may take more than one wife for many reasons, perhaps to gain the prestige of numerous wives, or because the first wife has not borne a son. A barren or sonless wife may be divorced and sent back to her family. The fortunate woman who has borne a son is endowed with property which is hers to hold in trust for her minor children. Should the mother of a son be widowed, she is a free agent and may remarry or not, as she pleases and whom she pleases. If a widow has no children or has only daughters, she may be forced into leviratic marriage (i.e., marriage with the brother of her deceased husband). If she has only daughters, her family may be broken up at the death of the husband.

It is in the light of these various changes in rights and statuses that the marriage is seen as pointing to the bearing of sons. There is great joy at the birth of a son, for thereby is the continuation of the line assured, and thereby is the marriage fulfilled.

The leviratic marriage is actually a form of social insurance, for thus does the Kazakh society take care of those families without a male head. The position of the conjugal family within the framework of the extended family is shown by this practice. A woman weds not her husband but her husband's family; when she marries her husband, she potentially marries her husband's brother. The marriage arrangements are made between the families, and the partners involved are not consulted. The line of the family flows not only through the husband but through his brother, and through all the close kin in the male line within the family. In medieval times, the son among both Turks and Mongols also married the widows of the deceased father other than his own mother,[1] but this form of marriage is now taboo.[2]

Within the extended family, and among close kinsmen generally, no one has his exact equal in status. The first basis for differentiation is the generation to which one belongs, the second is the order of birth, the third is chronological age. The age criterion is the least reliable and the least used, but it is there. Kazakh brothers and sisters are ranked according to order of birth, and treat one another with authority or with respect accordingly. Cousins are likewise ranked according to the order of birth of their fathers. The second son of the elder brother does not necessarily take precedence over the elder son of the second brother, however; here complicating factors come in, such as the chronological ages of the cousins in question. If there is a wide disparity in age, then the older cousin takes precedence regardless of birth order. A Kazakh treats his older brother as he does his father's younger brother, and his older sisters as he does his father's younger sisters. He calls them by the same terms and acts toward them in a similar fashion.[3]

Authority and respect tend to follow similar lines outside the family, in the village, clan, and khanate. These latter authority relations are modeled on the paternal, in a way similar to the Chinese, the Japanese, the Roman and South Slavic societies. In considering these parallels,

[1]Bichurin, 1950, p. 230.
[2]Grodekov, 1889, p. 29.
[3]Izvestnov, 1897, p. 11.

under the direction of the village leader. The leader and the elders decided all questions concerning village activities. The administration of justice was in the hands of the elders, while the enforcement of decisions was a common village enterprise; thus the village peace was kept. The raw framework of the village collectivity moved as a unit into the Soviet era.

The Kazakh lineage supplied the basis for the practice of marrying outside the group. The lineage occupied a common territory, and during the course of the past century the unit of common residence rather than the unit of descent and kinship has served to regulate marriage. Wives are sought outside the village; girls leave their native villages to join their husband's people, although this may not involve moving a great distance. The lineage is today generally identical with the village, and under the Soviet regime, with the collective farm. There is today the practice of kolkhoz exogamy.[1]

The practice of polygamy has likewise proved compatible with Soviet conditions. In former times, the many-wived family was the family of the well-born, the rich, the influential; today, the many-wived family is that of the village leader, the kolkhoz president, the brigade foreman. The leviratic marriage of the widow to the brother of the deceased or to another close kinsman has also accommodated itself to Soviet conditions, within the framework of the extended family, for among the peoples of the steppe this practice depends upon and reinforces the extended family structure. In Kazakhstan, the extended family rests on the close integration of several fraternal households and the conjugal families of a father and his sons and at times even grandsons.

The Soviet ideological campaign has directed attention to the practice of polygamy among leading elements in Kazakh collective farms; similarly, a number of reports indicate that leviratic marriage is still practiced. Soviet ethnographers do not discuss these institutions from the standpoint of the functions of the Kazakh extended family and the Kazakh village community. Instead, they have made a political issue out of what they are pleased to call the survival of the feudal mores. But they choose to ignore the fact that the practices which they condemn are part and parcel of the existing family and village system.

The status of women in Kazakhstan is a serious question to Soviet ideologists. In 1944, in 1949, and again in 1951, the Kazakh Party leadership was briefed by the Central Committee in Moscow regarding the participation of Kazakhs, of Kazakh women, and of literate and educated people in the Kazakh Communist Party (see Chapter 6, which deals with the Party). That the program has evidently fallen short of plan is suggested by the repetition of the instructions. The Kazakhs are not coming forward for training in Party work, despite the fact that they are periodically encouraged to do so, and despite the prestige and material advantages of Party membership. And the women lag behind the men in this respect.

Woman's position in Kazakh society, and the Soviet failure to understand the background of this position, has important consequences in the

[1] *Ibid.*, p. 86.

[Great Horde]

135 4. Marriage of a widow with her deceased husband's father is forbidden.

5. Marriage of a girl with her father's wife's brother is forbidden.

6. Marriage with a milk sister or with the wet-nurse is forbidden. (This is a Koranic influence.)

The following marriages are permitted, although no preferential pattern appears to be indicated:

1. Patrilateral cross cousin marriage (father's sister's daughter to mother's brother's son).

2. Marriage with the wife's sister only after the death of the wife, if the former is not already betrothed. Sororal polygyny is taboo.

3. Marriage with the brother's wife's sister on the death of the brother, when she no longer counts as kin. This is the same as the rule in the case of the wife's sister.

4. The son with his father's widow other than his own mother.

587 5. Marriage with the father's brother's widow. By this and the following, the levirate is established.

6. Marriage with the brother's widow.[123]

000 Despite the frequent reference in these rules of

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[123] Grodekov, 29 ff.

[Great Horde]

595 despite the frequent reference in these rules of plural wives, the Kazakh household was normally monogamous; polygyny was practised only when a man was rich enough to afford it, or if the first wife was childless, specifically, without sons, which was reckoned the greatest misfortune to a household.[124] While in Grodekov's [597] version of the rules, the practise of the levirate was possible on widowhood, the custom is put more strongly by Radlov who proposes that its occurrence was virtually automatic on the death of the husband.[125]

When the rich Kazakh acquired many wives, he set them up in separate tents, usually in different encampments, and spent part of the year in each locality, hoping thus, apparently, to avoid trouble. If the wives lived in the same encampment, it was the eldest wife who alone was the mistress of the combined households, and the younger wife was in a miserable position. Nevertheless, in terms of the general context of Islam, polygyny was rare.[126]

619 While there were yet Kalmuks in the vicinity of 88 the Kazakhs, at the beginning of the century, there were not a few intermarriages between the two groups. The Kazakh did not oblige the Kalmuk wife to change her

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[124] Radloff, op. cit., I, 484; Izrastsov, 70.

[125] Radloff, op. cit., I, 484-5.

[126] Ibid., 484.

[Great Horde]

49 lamaist faith for Islam. But where a marriage took place
58 between the two groups, the same rules obtained, covering
the taboo on sororal polygyny, etc., as among the Kazakhs
[57] themselves. At that earlier time, the 1830's, on the
death of a man, the brother who survived him had the
right to marry one of the wives of the deceased.[127] In
these earlier rules, or version of the same rules, the
levirate was not automatic, but optional, a formulation
which is stronger than Grodekov, but weaker than Radlov.

583 The marriage arrangements were centered around the
payment of the kalym or bridewealth by the family of the
groom to the father of the bride. The payment of the
bridewealth is the one irrecusable obligation of the
father to the son; the son cannot be deprived of this,
even with the worst of wills on the part of the father.
It is the family of the groom which contributes to the
kalym, moreover, and not merely the father. In a word,
it is the groom's cognatic kin, and not his agnatic kin
alone, who support him in this burden: his father, his
brothers, his father's brothers--his agnatic kinsmen--
and also his mother's brother.

The marriage arrangements were opened by an exchange
of pact-binding gifts between representatives of the
groom and those of the bride, followed by a discussion

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[127] Levchine, op. cit., 364.

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581 The marriage contract was made between the husband's family and the family of the wife; it is only in this way that we can understand the kalym on the one hand, since it was made over to the wife's family, and the levirate on the other. For the contract was to supply male issue not merely to the husband, but to the husband's line, thus involving the husband's brother and those sons of her husband who were not her own. Sociologically, the husband of the mother was the father of the child, but the wife of the father was not necessarily the mother of the child. Moreover, the sororate, or marriage with the deceased wife's sister, which was required if the latter was not yet betrothed, was part of an undertaking on the part of the bride's family to supply a genetrix to the husband's family, whether it was the woman originally stipulated or a substitute. If a widow broke the contract by seeking to marry outside her late husband's kin group, the second husband of the widow had to pay the kalym to the family of the first husband, or offer a girl in exchange from his own family; the girl's natal family enjoyed no role in her remarriage.[141]

587 In full accord with this interpretation, Radlov has observed that the wife belonged not to the husband, but to his family. Now Radlov had conceived that the levirate was an obligatory practice, while Israstsov,

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[141] Dingelstedt, 155.

587 Grodekov and Levshin have reported it only as customary. Yet even though he phrased the matter in an extreme way, Radlov was able to interpret fittingly from our point of view certain biologically anomalous customs as the marriage of a mature widow to an immature boy who happened to be the surviving brother of the deceased husband.[142]

Latterly in Kazakh society, a marriage between a widow and a stranger, i.e., one not in the deceased husband's kin group, could not be opposed by the family of the deceased; but the remarriage was recognized as socially valid only if the kalym was paid in full to the late husband's family.[143] The full status of the mother of sons is seen in her right to hold the deceased husband's estate in trust for her minor sons; it is seen in the practices governing widow remarriage as well. If a widow had borne male children, she could not be forced to remarry against her will.[144] But if she was childless or had borne only daughters, then she remained single only if she was ailing or aging.[145]

584 A kalym might require a number of years to be paid in full; nevertheless, the girl could not be married to

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[142] Radloff, op. cit., I, 485.

[143] Dingelstedt, 155.

[144] Izraztsov, 93.

[145] Ibid., 68.

[Great Horde]

584 anyone else unless she was past 20 years of age; and in such a case an appeal to the bii[1] had first to be made. If the original exchange of gifts had been made, a part of the kalym paid, and the girl was married to another before she was 20, then the kalym had to be returned, and in addition a heavy fine of from three to six nines of horses or camels had to be paid to the family of the rejected groom. This was an extremely heavy fine, in view of the fact that the kalym itself, which was reckoned a heavy tax on the family of the bridegroom, was equal to seven sevens of horses, or nine nines, or more. If the girl died, a sister would be supplied by the family of the dead girl, if possible, but the kalym in this case was much lower.[146]

768 587 If the wife died within two years of the marriage, the husband was obliged to return to the wife's family the dowry and all her private possessions, ornaments, etc. If she died after two years of the marriage, or having died before the two-year limit had borne sons to her husband, the husband was obliged to return nothing, nor could he ask for kalym in return as he might if the woman died before two years of marriage and childless. But he might require the family of the wife to supply him with another wife, in which case he paid a lower kalym.[147]

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[146] Izraztsov, 81.

[147] Ibid., 82-83.

[1] [On the bii or "elder," cf. cat. 116, AHI Mongolia, pp. 411-412--Analyst]

586 a family would see to it that the husband would not get rid of the woman who was valuable both for her fertility and for her capacities as a worker, and it took place as a rule only if the woman were incurably ill, or for like reasons.[154]

• 587 In the event that the husband was known to be impotent, the wife took a second husband from the family of the first--"in order not to have discredit cast upon her in the eyes of others." The new husband paid a kalym called the kalym of kinship, which was materially lower than that of the original kalym, and whose ratio was in inverse proportion to the degree of consanguinity be-
[586] tween the two men concerned. The children of the divorced couple remained with the family of the first husband, but a son who was of age had the right of choosing among his kin; also, an eldest daughter could often follow her mother.[155] Among the wealthy, there was usually no question of divorce, since a husband could easily afford another wife.

Criminal Law in its Relation to the Kinship System

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613 A distinction between theft of cattle--rustling--in general and seizure from specified kinsmen--baranta--

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[154] Izrastsov, loc. cit.

[155] Tingelstedt, loc. cit.

[Little Horde]

000 married a second wife without the prior consent of the first.[207] However, the maintenance of separate households was not correlated exclusively with the need for diminishing family friction, it was closely associated with the distribution of family property among the various segments of the household, as we shall see when the question of inheritance and succession within the family is taken up. Briefly, subject to later confirmation, it may be said that the wealth of the family was settled on the sons during the father's lifetime in a polygynous family, and if the settlement was made while the sons were still minor, the wife living in her own tent with her children held the patrimony in trust until her sons came of age. There was some change of roles within the household: while in the 1870's the first wife was the mistress of the menage, by the turn of the century the second wife could often rule over the first.[208]

587 A certain number of the polygynous households were the result of the levirate where the surviving brother was already married. A proverb of the Little Horde runs:

aga ulsa dzengo mura
eni ulsa kelin mura
at ulsa saury mura.

"If the elder brother dies, his wife goes to the younger

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[207] Balliuzek, 85-86.

[208] Karuts, loc. cit.

•587 brother; [just as] when a horse dies, the hide is property of the owner."[209] The "owner" of the wife in this sense cannot be regarded as either of her husbands, but as the extended family which thus maintained her. A ten-year-old boy might receive a wife who already had borne children, and if the deceased husband had no brothers, the husband's family then sought to find a husband for her among the closest collateral kinsmen in the paternal line, the husband's father's brother's son, etc.[210]

However, the widow did not always go to the husband's oldest surviving brother; she might go to another brother or to a close kinsman of the deceased on payment of a horse.[211]

If the widow had borne sons, and if she herself preferred another brother of the deceased other than the one on whom she would have ordinarily devolved, the other brother might make a small payment to the primary candidate, and he then would be able to marry the widow who came to him with all her children and her deceased husband's estate. If the widow was childless, however, she went to her new husband with her nuptial tent alone, but shorn of her former husband's herds, etc., while the

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[209] Balliuzek, 99.

[210] Altynsarin, 102.

[211] Plotnikov, 125.

[Little Horde]

property of the deceased was distributed equally among the surviving brothers. If she had one son, and no matter how many daughters, her children were not taken away from her; all remained by her. But if she had only daughters, and no sons, then they were taken away from her and given to the husband's brothers to raise, and she was permitted to keep one daughter at the most by her.[212]

177.58 587 This was the idealized model of the family around the year 1870; actually the acculturative process had begun, of which the contemporary reporters were aware; and they regarded it as the result of Russian influence. Thus, a degree of loosening of the practice of the levirate was noted, and a newly widowed woman was adjured rather than commanded: "Thou hast the right to reject one person, but not the entire line or clan [of the husband]. With thousands of people there will be at least one who will meet your taste."[213] The widow was considerably freer than the unmarried girl, for she was not under the thumb of a father, and had some choice or option. The husband's family, moreover, was telling her that she should stay among the agnatic kin of her deceased husband, that that was where by custom she should stay, and continue that line which was in the larger

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[212] Balliuzek, 99-100.

[213] Ibid., 101.

[Little Horde]

177.58
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sense her husband's; but they were losing control over her.

A generation later it was only a memory that the widow had once necessarily remarried leviratically, and by the turn of the century a number of alternatives had been opened to her in the Little Horde. She might indeed marry her deceased husband's brother; again she might simply go to live in the household of the latter informally; or she might marry away from her husband's kin entirely.[214]

177.58
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Divorce was rare in the 1870's.[215] In the following generation, the same general pattern still existed in divorce as elsewhere on the steppe: the husband needed very little grounds to divorce his wife; the wife was limited to the following grounds--impotence and maltreatment on the part of the husband. The latter is a variant on the desertion or nonsupport for a year as the wife's grounds for divorce. However, she was also permitted to divorce her husband by the turn of the century if he was unfaithful to her. The divorced woman was simply returned to her father; if she married again, it was without the formalities of the kalym, the go-between, and so forth.[216] Husband's infidelity as

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[214] Karutz, Kirgisische Hochzeit, 42.

[215] Galliuzek, 90.

[216] Karutz, loc. cit.